



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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June 9, 2009

MEMORANDUM FOR Managers and Employees EP Determinations

FROM: Andrew E. Zuckerman, s/Andrew E. Zuckerman
Director, Rulings and Agreements

SUBJECT: Interim Guidance – EP Determination Letter 2044(DO/CG)

The purpose of this memorandum is to provide interim guidance on issuing Letter 2044 (DO/CG) EP Withdrawal Letter. It affects EP Determinations Managers, Revenue Agents, Tax Law Specialists and secretaries. The change to Letter 2044 (DO/CG) is in accordance with sections 4.02 and 5.07(3) of Rev. Proc. 2008-50, 2008-35 I.R.B. 464.

The attached Exhibit details the procedural changes and the language contained in selective caveat Number 10. The changes will be incorporated into IRM 7.13.5, Letter Generation within one year from the date of this memorandum,

If you have any questions, please contact Joyce Robinson De Witt, EP Rulings and Agreements Technical Guidance and Quality Assurance, or have a member of your staff contact Cameron Kalchert at 513-263-3918.

Attachment: Exhibit 1

cc: www.IRS.gov

Exhibit 1

Letter 2044 (DO/CG) used when employers withdraw their determination letter requests has been revised to add a selective caveat number 10. This caveat must be used when returning a case using Letter 2044 (DO/CG) that has a potential qualification issue.

Caveat number 10 states:

Under the provisions of sections 4.02 and 5.07(3) of Rev. Proc. 2008-50, 2008-35 I.R.B. 464, the request to withdraw your determination letter application makes your plan ineligible to use the Voluntary Correction Program to correct any failure that (i) was identified by the Service or (ii) relates to any request for information made by the Service during the determination letter process. In addition, with respect to any failure described in the previous sentence, the plan is considered to be Under Examination (as defined in section 5.07 of Rev. Proc. 2008-50) for the purpose of determining your plan's eligibility to implement correction under the Self Correction Program.

When an applicant withdraws an application that contains a potential qualification issue, in addition to using caveat number 10 on Letter 2044 (DO/CG), determination specialists must send the below listed information to the closing agreement coordinator for the responsible EP Determination Area.

- Name of Sponsor
- EIN
- Plan Name
- Plan Number
- Potential Issue(s)

EP Determination specialist, also, must continue to follow the enforcement procedures in IRM 7.11.1.20.